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No. 01-270

In the Supreme Court of the United States

YELLOW FREIGHT SYSTEM, INC., PETITIONER

v.

MICHIGAN, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Section 4005 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 2146, permits States to charge commercial motor carriers operating in interstate commerce "a fee * * * that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." 49 U.S.C. 14504(c)(2)(B)(iv) (Supp. V 1999). The question presented in this case is whether the Michigan Supreme Court erred in holding that only a State's "generic" fee is relevant to determining the fee that was "collected or charged as of November 15, 1991."

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATEMENT

1. Section 4005 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Pub. L. No. 102-240, 105 Stat. 2146, formerly codified at 49 U.S.C. 11506 (1994), directed the Interstate Commerce Commission (ICC) to amend its regulations to establish a "Single State Registration System" for commercial motor carriers subject to the ICC's jurisdiction. In 1995, Congress abolished the ICC and assigned the ICC's responsibility for administering the Single State Registration System to the Secretary of Transportation. See ICC Termination Act of 1995, Pub. L. No. 104-88, § 101, 109 Stat. 804 (abolishing ICC); 49 U.S.C.

14504 (Supp. V 1999) (recodification of Section 4005, as amended).

Congress intended that the Single State Registration System would end the "bingo card" regime that had been in effect since the 1960s. Under that earlier system, the ICC authorized each State to charge carriers a registration fee of as much as ten dollars for each vehicle using the State's highways. The State would issue the carrier a registration stamp for each registered vehicle. The carrier would distribute the stamps to its drivers, who displayed them on vehicle-specific cards that could be produced to state inspectors on request. See *National Ass'n of Regulatory Util. Comm'rs (NARUC)* v. *ICC*, 41 F.3d 721, 724 (D.C. Cir. 1994) (discussing bingo card system). As of 1991, 39 States charged registration fees under the bingo card program and those fees totaled approximately $50 million. *Ibid.* (quoting H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 437 (1991)).

Under the Single State Registration System, by contrast, "a motor carrier is required to register annually with only one State" and "such single State registration shall be deemed to satisfy the registration requirements of all other States." 49 U.S.C. 14504(c)(1)(A) and (C) (Supp. V 1999); see 49 U.S.C. 11506(c)(1)(A) and (C) (1994) (same). The registration State (which generally is required to be the carrier's principal place of business, see 49 C.F.R. 367.3(a)) collects per-vehicle fees from its carriers on behalf of the other States that participate in the Single State Registration System and into which the carrier plans to send its trucks. See 49 U.S.C. 11506(c)(2)(A)(iii) (1994). Trucking companies thus do not have to obtain annual, vehicle-specific registrations from each of the States where their trucks operate. ISTEA also limited the registration fees that

each State could charge. Congress directed the ICC to adopt standards for a fee system that:

> (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of complying with the registration system, and (III) *will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.*

49 U.S.C. 11506(c)(2)(B)(iv) (1994) (emphasis added). Only the 39 States that participated in the bingo card system as of January 1, 1991, were eligible to participate in the Single State Registration program. 49 U.S.C. 11506(c)(2)(D) (1994); see 49 U.S.C. 14504(c)(2)(D) (Supp. V 1999) (same).

2. Under the bingo card system, it was common for States to enter into "reciprocity agreements" under which they reduced or eliminated registration fees for each other's motor carriers. See *NARUC* v. *ICC*, 41 F.3d at 725. In the ICC's rulemaking proceedings to implement the Single State Registration System, the question arose whether States could increase their revenues under the new regime by terminating reciprocity agreements that were in effect in 1991. The ICC initially questioned whether it had authority to require the States to preserve their reciprocity agreements. The ICC noted that the agreements had been made voluntarily rather than by federal compulsion and that "it might place a heavy administrative burden on a registration State" if the State had to "collect from different carriers different fees * * * depending on the various reciprocal agreements negotiated by the various States in which each carrier operates." *Single*

State Ins. Registration, No. MC-100 (Sub-No. 6), 1993 WL 17833, at *12 (ICC Jan. 13, 1993); see *Single State Ins. Registration—1993 Rules*, 9 I.C.C.2d 1, 11 (1992). Some commenters, including petitioner, argued in response that the plain language of Section 11506(c)(2)(B)(iv)(III) (1994), italicized above, requires that reciprocity agreements be considered "when determining the fees * * * collected or charged as of November 15, 1991." Pet. App. 52a; see *id.* at 53a.

In its final decision implementing the single-State program, the ICC concluded that its preliminary view was inconsistent with the letter and intent of Section 11506(c)(2)(B)(iv) and that reciprocity arrangements must be considered in order to cap registration fees at their levels as of November 15, 1991. Pet. App. 53a-54a. The ICC observed that if States discontinued their reciprocity arrangements, "per vehicle fees for many carriers [based in those States] could increase greatly, and some States would realize windfalls." *Id.* at 54a. Although reciprocity agreements might make calculation of the applicable fees more cumbersome, the ICC determined that this administrative burden on the registration State was "outweighed by the likely cost to carriers that could result" from terminating the reciprocity agreements. *Ibid.*

NARUC and state regulatory commissions sought review of the ICC's rulemaking decision in the United States Court of Appeals for the District of Columbia Circuit. *NARUC* v. *ICC*, *supra*. They argued in pertinent part that, when Congress referred to "the fee * * * that [a participating] State collected or charged as of November 15, 1991," it was referring to "the standard fee authorized by each participating State's law," rather than any lower amount that the State might actually have been charging or collecting. Br. of State

Pet'rs and Intervenors, *NARUC* v. *ICC*, *supra* (No. 93-1362).

The D.C. Circuit rejected that argument. *NARUC* v. *ICC*, 41 F.3d at 729. It agreed with the ICC that "the plain language of the statute precludes [the States'] interpretation" and "clearly freezes prior state charges" at the levels actually imposed as of November 15, 1991. Alternatively, the court rejected the States' argument that the ICC's interpretation was irrational and not entitled to deference because it would perpetuate the imposition of any fees that may have been charged in violation of state law in 1991. *Ibid.* Section 11506, the court of appeals reasoned, "merely states that the state may not charge *more* than was charged or collected in the past." *Ibid.* Carriers therefore would not be obligated to pay fees that were illegal under state law when imposed and the ICC's reading of Section 11506's fee cap did not produce anomalous results. *Ibid.* No party sought further review of the D.C. Circuit's decision.

3. Petitioner in this case is a major interstate trucking company headquartered in Kansas. Pet. 1; Pet. App. 40a. Some of petitioner's trucks carrying Illinois license plates enter Michigan and are potentially subject to Michigan's fees under the Single State Registration System. See Pet. 3. For calendar years 1990 and 1991, Michigan did not charge petitioner any bingo stamp fees for those trucks that were "base-plated" in Illinois. Pet. App. 39a-40a; Br. in Opp. App. 3b. Michigan did not charge such fees because it believed that Illinois "did not charge Michigan-based carriers a fee." Br. in Opp. App. 3b. Michigan and Illinois did not have a formal reciprocity agreement, however. *Ibid.*

In September 1991, Michigan mailed petitioner a fee assessment for calendar year 1992 in the amount of ten

dollars for each of petitioner's trucks, including the trucks base-plated in Illinois. Pet. App. 40a; Br. in Opp. App. 4b-5b. Michigan levied those fees pursuant to a new state policy under which Michigan afforded reciprocity to the State where a particular carrier had its principal place of business rather than to the State in which a particular truck was base-plated. Pet. App. 40a-41a; Br. in Opp. App. 4b-5b. Because Kansas did not waive fees for Michigan trucks, Michigan assessed its maximum ten-dollar fee on all of petitioner's trucks. Pet. App. 41a; Br. in Opp. App. 5b. Payment on the 1992 assessment was due on January 1, 1992, although petitioner paid in September 1991. Pet. App. 5a, 25a. In later years, Michigan continued to assess a ten-dollar fee on each of petitioner's trucks. *Id.* at 40a.

Petitioner paid Michigan's registration fees under protest and brought suit in the Michigan Court of Claims. Petitioner sought a refund of the fees it paid for calendar year 1994, when the Single State Registration System became effective (see 49 U.S.C. 11506(c)(3) (1994)), and later years. See Pet. 11. The Michigan trial court ruled in favor of petitioner. Pet. App. 39a-42a. It relied on *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Registration*, 9 I.C.C.2d 1184 (1993), in which the ICC specifically agreed with petitioner's argument that ISTEA's cap on fees at the level "charged or collected as of November 15, 1991," 49 U.S.C. 11506(c)(2)(B)(iv) (1994), referred to fees charged or collected for calendar year 1991, not fees assessed in advance for 1992. Pet. App. 41a-42a; see 9 I.C.C.2d at 1192, 1195. Deeming the ICC's decision "dispositive," Pet. App. 41a, the court held that Michigan's assessments on petitioner's Illinois trucks for 1994 through 1996 were unlawful under ISTEA because they exceeded the fees Michigan had

charged petitioner for those trucks for calendar year 1991, *id.* at 42a.

The Michigan Court of Appeals affirmed. Pet. App. 23a-35a. In the intermediate court's view, Section 11506(c)(2)(B)(iv) did not unambiguously answer the question of whether a State's billing of 1992 fees before November 15, 1991, should be considered when determining the State's fee-cap under the Single State Registration System. *Id.* at 28a. Applying *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and analogous state court decisions, the Michigan Court of Appeals held, in relevant part, that the ICC's application of the November 15, 1991 deadline to exclude consideration of fees for 1992 was reasonable and entitled to deference. Pet. App. 27a-29a. Relying on the D.C. Circuit's decision in *NARUC* v. *ICC*, *supra*, the court also rejected Michigan's argument that fee reductions that resulted from reciprocity agreements need not be considered when applying the fee cap. Pet. App. 29a.

The Michigan Supreme Court reversed. Unlike the lower state courts, it did not consider the significance of Michigan's change from a base-plate methodology to a place-of-business methodology for calendar year 1992. Instead, the Michigan Supreme Court addressed the more "fundamental" question of "whether Michigan's reciprocity agreements should be considered" at all when determining what fees Michigan "collected or charged as of November 15, 1991." Pet. App. 6a. In the court's view, reciprocity agreements are not relevant because 49 U.S.C. 11506(c)(2)(B)(iv) (1994) unambiguously requires one to "look not at the fees paid by plaintiff in any given year, but at the generic fee Michigan charged or collected from carriers as of November 15, 1991." Pet. App. 9a. The court expressly

rejected the D.C. Circuit's opposite conclusion in *NARUC* v. *ICC*, *supra*. Pet. App. 6a-7a. Because it considered Section 11506 to be clear on its face, moreover, the court refused to afford *Chevron* deference to the ICC's determination that reciprocity agreements in effect in 1991 must be considered when setting fees. *Id.* at 8a-9a. Accordingly, the Michigan Supreme Court held that the fee Michigan "charged or collected as of November 15, 1991" was the maximum fee of ten dollars authorized by Michigan law on that date, without regard to the fees Michigan actually imposed under its reciprocity policy. *Id.* at 10a.

DISCUSSION

The decision of the Michigan Supreme Court is incorrect and conflicts directly with the decision of the District of Columbia Circuit in *NARUC* v. *ICC*, 41 F.3d 721 (1994). The decision below also has considerable importance for the interstate trucking industry. Therefore, the United States suggests that the petition be granted. The question presented by petitioner, however, should be reformulated to focus this Court's review on the precise issue that divides the Michigan Supreme Court and the federal court of appeals.

1. The holding of the Michigan Supreme Court is that 49 U.S.C. 11506(c)(2)(B)(iv) (1994) (and therefore 49 U.S.C. 14504(c)(2)(B)(iv) (Supp. V 1999)) cap a State's fees under the Single State Registration System at the level of the "generic fee" that was authorized under state law as of November 15, 1991. Pet. App. 9a-10a. The D.C. Circuit's decision in *NARUC* v. *ICC*, by contrast, directly rejected the States' argument that Section 11506 froze state charges at the standard fee (not to exceed ten dollars) authorized by state law, rather than at the level actually imposed in 1991.

41 F.3d at 729; see pp. 4-5, *supra*. There is a square conflict between those two decisions, and the D.C. Circuit was correct.

By its plain terms, ISTEA prohibits a State that participates in the Single State Registration System from imposing a fee greater than the fee that the State "collected or charged as of November 15, 1991." 49 U.S.C. 11506(c)(2)(B)(iv)(III) (1994); 49 U.S.C. 14504(c)(2)(B)(iv)(III) (Supp. V ~~1999~~). Congress did *not* cap fees at the level that States lawfully *could have* collected or charged in 1991. Congress, moreover, intended that substitution of the Single State Registration System for the old bingo card system would "benefit the interstate carriers" (and therefore consumers) by reducing the carriers' costs of complying with state fee requirements. H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 437 (1991). If a participant in the Single State Registration System could charge *all* carriers the maximum fee (of up to ten dollars) that it lawfully charged any carrier in 1991, then fees could increase greatly under the Single State Registration System and the system might not reduce carriers' overall compliance burden at all. Indeed, comments submitted to the ICC during its rulemaking proceeding suggested that State fees could quadruple—from $50 million to $200 million nationwide—under the "generic fee" approach endorsed by the Michigan Supreme Court. Pet. App. 53a.

If there were textual ambiguity as to whether 49 U.S.C. 11506(c)(2)(B)(iv)(III) (1994) capped fees at the charge actually imposed in 1991 or the charge that could have been imposed consistent with state law, then the ICC's resolution of this question would be entitled to deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-845 (1984), and *United States* v. *Mead Corp.*, 121 S. Ct.

2164, 2171 (2001). Congress explicitly directed the ICC to promulgate rules implementing the Single State Registration System, including the statutory fee cap. 49 U.S.C. 11506(c)(1) and (2)(B) (1994). The ICC determined, after notice and comment, that ignoring the States' fee-reduction arrangements when implementing the cap would be inconsistent with Congress's intent to both (1) maintain state revenues at their 1991 levels and (2) lessen the burdens that registration imposed on carriers.[1] Pet. App. 53a-54a. Furthermore, the ICC determined that any administrative benefits the States might realize from having a simplified fee structure "would be outweighed by the likely cost to carriers that could result" from disregarding the reciprocal discounts that were in effect in 1991. *Id.* at 54a. In *NARUC* v. *ICC* the D.C. Circuit upheld the ICC's determinations under the Administrative Procedure Act, see 5 U.S.C. 701-706, and those determinations are "binding in the courts" under basic principles of administrative law. *Mead*, 121 S. Ct. at 2171; see also *Aluminum Co. of Am.* v. *Central Lincoln Peoples' Util. Dist.*, 467 U.S. 380, 390 (1984) (deference principles "have particular force" in context of contemporaneous statutory construction by officials charged with setting up new administrative regime).[2]

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[1] As the D.C. Circuit explained in *NARUC* v. *ICC*, 41 F.3d at 724, the fee provisions of Section 11506 reflect a legislative compromise. The House would have eliminated the States' power to charge registration fees while giving the States a $50 million grant to offset their revenue loss. The Senate would not have changed the bingo card system at all. The compromise was to cap fees at 1991 levels while reducing the carriers' costs through a streamlined registration system.

[2] In addition to relying on principles of deference to the agency that Congress charged with making legislative rules, see Pet. 22-28, petitioner invokes preclusion principles, suggesting that "as a party in the [ICC's rulemaking] proceeding, the Michigan Public Service Commission arguably is bound by its results," *id.* at 27 n.13; see generally *Yakus* v. *United States*, 321 U.S. 414 (1944); but see *JEM Broadcasting Co.* v. *FCC*, 22 F.3d 320, 325 (D.C. Cir. 1994) (holding that substantive validity of agency rule, but not alleged procedural defects, may be raised as defense in enforcement action). That issue was not presented to or passed on by the Michigan Supreme Court, and it need not be addressed by this Court.

2. The issue on which the D.C. Circuit and the Michigan Supreme Court disagree is important to the trucking industry, to proper administration of ISTEA, and to interstate commerce. As noted above, rulemaking comments submitted to the ICC indicated that if all 39 States eligible to participate in the Single State Registration System adopted the "generic fee" rule endorsed by the Michigan Supreme Court in this case, then registration fees could have increased by $150 million—enough to outweigh the benefits of eliminating bingo cards. See Pet. App. 53a-54a. The number of vehicles potentially subject to fees under the Single State Registration System has more than doubled since the ICC's rulemaking, and the potential aggregate fee increase therefore has increased proportionately.

Furthermore, although Michigan states (Br. in Opp. 9) that its change from base-plate reciprocity to principal-place-of-business reciprocity as of calendar year 1992 meant only that "some carriers paid more while other carriers paid less," the Michigan Supreme Court's decision would seem prospectively to allow Michigan to charge *all* interstate carriers a fee of ten dollars per vehicle for *all* trucks that enter Michigan. See Pet. App. 9a-11a. Information provided to the Department of Transportation by Michigan in

connection with the preparation of this filing indicates that Michigan presently does not assess any fee on trucks operated by carriers with their principal place of business in one of 20 States, the District of Columbia, or six Canadian Provinces. If Michigan eliminated all of those fee waivers, then the decision below would result in significant fee increases for the trucking industry even if no other State followed Michigan's lead. Such additional charges would be inconsistent with Congress's specific determination, when adopting ISTEA, that any increase in fees above the level prescribed in Section 11506(c)(2)(B)(iv)(III) (1994) would unreasonably burden interstate commerce. See 49 U.S.C. 11506(b) and (c)(2)(C) (1994).[3]

3. Michigan argues that review by this Court is not warranted because "the result in this case would be the same regardless of how the conflict [presented by the petition] is decided." Br. in Opp. 7. Michigan notes that, as of November 15, 1991, it already had abandoned its base-plate approach to reciprocity (under which Illinois-plated trucks were exempt from Michigan's fee), and had adopted the principal-place-of-business reciprocity approach (under which Kansas motor carriers had to pay a ten-dollar fee). Michigan argues that its

[3] The *Procedures Manual for the Single State Standards for Registration of Interstate Motor Carrier Operations Under Section 4005, Title IV* (*Procedures Manual*) (July 1, 1994), which was issued by the National Conference of State Transportation Specialists, sets out rules on which the States that participate in the single-State registration program have agreed. Consistent with the ICC's determination, Section XIII.A. of the *Procedures Manual* provides that "[r]eciprocity agreement(s) in effect as of November 15, 1991 must be considered when determining fees to be charged under [the single-State] program." The *Procedures Manual* does not have the force of law, however.

fees were being "collected or charged" under the latter approach as of November 15, 1991, and thus fees consistent with that approach are permissible under ISTEA. See *id.* at 9-10. Michigan further suggests that its use of a principal-place-of-business approach should be permissible because the change to that approach was "revenue neutral" and was necessary to align Michigan's policies with the Single State Registration System. See *id.* at 9, 11; Br. in Opp. App. 4b-5b.[4]

The United States takes no position on whether Michigan's current fee policy is lawful under ISTEA for reasons other than the one given by the Michigan Supreme Court. If this Court were to reject the Michigan Supreme Court's "generic fee" theory, then Michigan's alternative defenses of its fees could be presented to the Michigan Supreme Court on remand or the parties could ask the Department of Transportation to consider their arguments.[5] The important

[4] Consistent with federal rules, see 49 C.F.R. 367.3(a), Section I.N. of the *Procedures Manual* requires carriers to register in the State where they maintain their principal place of business, so long as that State participates in the Single State Registration System. Section XIII.B. of the *Procedures Manual* encourages the use of a carrier's principal place of business as the basis for reciprocity, by providing that "[a] motor carrier whose principal place of business is located in a state not eligible to participate in this program *shall not* use its designation of a registration state for this program to afford itself any benefits of reciprocity agreements of that registration state."

[5] In October 1998, the State of Michigan and the Michigan Public Service Commission petitioned the Administrator of the Federal Highway Administration to revisit the ICC's holding in *American Trucking Associations—Petition for Declaratory Order —Single State Insurance Registration*, 9 I.C.C.2d 1184 (1993), that Section 11506's fee cap forbids consideration of fees assessed in advance for calendar year 1992. See *id.* at 1192, 1195. In 2000,

point for present purposes is that the Michigan Supreme Court deemed Michigan's reciprocity practices wholly irrelevant to implementation of Section 11506(c)(2)(B)(iv). See Pet. App. 6a. It is that issue—and that error by the State Supreme Court—that warrants review by this Court.

4. Although we suggest that the Court grant review, the petition's formulation of the question presented could complicate unnecessarily the Court's consideration of this case. The question stated by petitioner is

> whether the Michigan Supreme Court erred in disregarding the ICC's determination and ruling that, notwithstanding 49 U.S.C. §11506(c)(2)(B)(iv)(III), States may charge registration fees in excess of those charged and collected under reciprocity arrangements in force as of November 15, 1991.

Pet. i. Petitioner thus would have this Court determine the legal effect of "reciprocity arrangements in force as of November 15, 1991." *Ibid.* The record, however, indicates that Michigan canceled its reciprocity agreements with other States in 1989. Br. in Opp. App. 3b. Information gathered by the Department of Transportation indicates that, thereafter, Michigan's fee-waiver policy was not based on reciprocal waivers by the other State in all instances. Those factual complexities about what "reciprocal arrangements" (if any) were "in force" in Michigan in 1991 need not be brought into this case because they have no bearing on the Michigan Supreme Court's holding that only the State's ten-dollar "generic" fee is relevant to applying the fee-cap provision. Furthermore, and contrary to petitioner's framing of the question, the statutorily mandated inquiry is what fees were "collected or charged as of November 15, 1991," not what arrangements were "in force."

Michigan reformulates the question presented as whether its fee assessments mailed in September 1991 were "collected or charged as of November 15, 1991," even though they were for calendar year 1992. Br. in Opp. i. If the petition were granted, Michigan apparently would have this Court address arguments about its change to principal-place-of-business reciprocity, which the Michigan Supreme Court *did not* consider, rather than the Michigan Supreme Court's straightforward holding that Michigan's reciprocity policy was irrelevant to applying ISTEA's fee cap.

Because of the deficiencies in the questions framed by the parties, and to ensure that this Court can resolve, without unnecessary complexity, the important issue of statutory construction on which the Michigan Supreme Court disagrees with the ICC and the United States Court of Appeals for the District of Columbia Circuit, we suggest that certiorari should be granted on the following question: "Whether the Michigan Supreme Court erred in holding that, under 49 U.S.C. 11506(c)(2)(B)(iv)(III) (1994) and 49 U.S.C. 14504(c)(2)(B)(iv)(III) (Supp. V 1999), only a State's

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motor-carrier safety matters were transferred from the Federal Highway Administration to the Federal Motor Carrier Safety Administration, to which the petition was transferred at that time. See Motor Carrier Safety Improvement Act of 1999, Pub. L. No. 106-159, 113 Stat. 1748; 49 U.S.C. 113 (Supp. V 1999). The Michigan Supreme Court's holding in this case mooted the relief Michigan sought in its petition. Michigan could, however, revive its request if the Michigan Supreme Court's decision were reversed. We also note that Congress has authorized the Secretary of Transportation to adopt new regulations that could modify or terminate the Single State Registration System. 49 U.S.C. 13908 (Supp. V 1999).

'generic' fee is relevant to determining the fee that was 'collected or charged as of November 15, 1991.'"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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